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 14 SAN BERNARDINO; CORY
 15 MCCARTHY, ANDREW POLLICK;
 16 DAVID MOORE, and CRISTINA
 17 OLIVAS

18 **UNITED STATES DISTRICT COURT**
 19 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

20 A.J.P. and A.M.P., minors by and
 21 through their guardian ad litem Cynthia
 22 Nunez, individually and as successor in
 23 interest to Albert Perez, deceased; and
 24 PATRICIA RUIZ, individually,

25 Plaintiffs,

26 v.

27 COUNTY OF SAN BERNARDINO;
 28 and DOES 1-10, Inclusive,

Defendant.

Case No. 5:22-CV-01291 SSS (SHKx)

*[Honorable Sunshine Suzanne Sykes,
 Magistrate Judge, Shashi H.
 Kewalramani]*

**STATEMENT OF
 UNCONTROVERTED FACTS IN
 SUPPORT OF DEFENDANTS'
 MOTION FOR SUMMARY
 JUDGMENT**

Filed concurrently with:

1. Notice of Motion and Motion;
2. Declaration of Kayleigh Andersen;
3. Declaration of Sergeant Gaytan;
4. Declaration of Corporal McCarthy;
5. Declaration of Corporal Olivas;
6. Declaration of Corporal Pollick;
7. Declaration of Deputy Moore;
8. Declaration of Deputy Stone;
9. Declaration of Sergeant Scalise;
- and
10. [Proposed] Order

Date: April 19, 2024

Time: 2:00 p.m.

Crtrm.: Courtroom 2, 2nd Floor

Action Filed: 07/22/2022

**TO THIS HONORABLE COURT AND THE PARTIES AND THEIR
RESPECTIVE COUNSEL OF RECORD:**

In accordance with C.D L.R. 56-1 and this Court’s Standing Order, defendants COUNTY OF SAN BERNARDINO (“County”); CORY MCCARTHY (“Corporal McCarthy”), ANDREW POLLICK (“Corporal Pollick”); DAVID MOORE (“Deputy Moore”), and CRISTINA OLIVAS (“Corporal Olivas”) (“Defendnat Deputies” and collectively “Defendants”) submit this Statement of Uncontroverted Facts and Genuine Disputed in support of their Motion for Summary Judgment.

Uncontroverted Facts	Supporting Evidence
1. On Sunday, August 29, 2021, at approximately 1726 hours, San Bernardino County Sheriffs’ Dispatch received a 911 call for service at 16576 Zenda Street #1, Victorville.	Call Log History (Ex. “A”) at pg. 1.
2. The reporting party, Helen Fregoso, reported her daughter’s friend, Albert Perez (“Perez”), was in the garage, causing a disturbance, and that he had a gun in his front right pocket.	Call Log History (Ex. “A”) at pg. 1; Fregoso Depo. (Ex. “B”) at 32:5-17, 22-25, 33:1-3.
3. Helen Fregoso’s daughter, Renee Caudillo, advised Sheriffs Dispatch that Perez told her that she was causing him problems and thought people were after him, and that he pulled out a black gun from his pocket.	Call Log History (Ex. “A”) at pg. 1.
4. Deputy Steven Carter was the first to arrive at the incident location, and located Perez in the garage and observed a black gun in Perez’ hand.	Call Log History (Ex. “A”) at pg. 2.
5. Deputy Steven Carter ordered Perez to drop the gun, but Perez did not comply.	Call Log History (Ex. “A”) at pg. 2.

1	6. Perez remained in the garage with the	Call Log History (Ex. "A") at pgs. 2, 3,
2	gun in his hand and refusing	4
3	commands from deputies to drop the	
4	gun.	
5	7. At approximately 1900 hours,	Gaytan Decl., ¶ 2; McCarthy Decl., ¶
6	Sergeant Luke Gaytan ("Sergeant	2; Olivas Decl., ¶ 2; Pollick Decl., ¶ 2;
7	Gaytan") requested via text message	Moore Decl., ¶ 2; Stone Decl., ¶ 2;
8	that all members of the San	McCarthy Depo. (Ex. "D") at 9:4-10.
9	Bernardino County Sheriff's	24:1-6.
10	Department Specialized Enforcement	
11	Division Team 1 ("SED Team")	
12	respond to Zenda Street in Victorville	
13	for a barricade situation where the	
14	subject had threatened a female with	
15	a firearm, and the subject was still	
16	armed and barricaded in the garage of	
17	a multi-unit complex where he did	
18	not live.	
19	8. Sergeant Gaytan also notified the	Gaytan Decl., ¶ 3; McCarthy Decl., ¶
20	SED Team that a crisis negotiator,	3; Olivas Decl., ¶ 3; Pollick Decl., ¶ 3;
21	Negotiator Anthony Alcala, was also	Moore Decl., ¶ 3; Stone Decl., ¶ 3.
22	responding to the incident location.	
23	9. Sergeant Gaytan had all members of	Gaytan Decl., ¶ 4; McCarthy Decl., ¶
24	the SED Team, which included	4; Olivas Decl., ¶ 4; Pollick Decl., ¶ 4;
25	Sergeant Gaytan, Corporal Andrew	Moore Decl., ¶ 4; Stone Decl., ¶ 4;
26	Pollick, Deputy Josh Stone, Deputy	Pollick Depo. (Ex. "C") at 5:25-6:4;
27	David Moore, Corporal Cristina	McCarthy Depo. (Ex. "D") at 22:6-13.
28	Olivas, Corporal Cory McCarthy, and	
	Corporal Greg Gary, meet at the	
	Victorville Library just west of the	
	incident location for a briefing prior	
	to arriving at the subject location.	
	10. During this briefing, the SED Team	Gaytan Decl., ¶ 5; McCarthy Decl., ¶
	learned that patrol deputies from the	5; Olivas Decl., ¶ 5; Pollick Decl., ¶ 5;
	Victorville Sheriff's Station were	Moore Decl., ¶ 5; Stone Decl., ¶ 5;
	negotiating with the suspect, Perez,	McCarthy Depo. (Ex. "D") at 23:5-13;
	who was seated on a stool at the rear	Perez Photos (Ex. "K").

1	of the garage behind a pool table and	
2	was in possession of a gun.	
3	11.The SED Team also learned that the	Gaytan Decl., ¶ 6; McCarthy Decl., ¶
4	door from the garage to the home had	6; Olivas Decl., ¶ 6; Pollick Decl., ¶ 6;
5	been locked by the homeowner, and	Moore Decl., ¶ 6; Stone Decl., ¶ 6.
6	that both sides of the garage were	
7	contained by patrol units and they	
8	were trying to de-escalate the	
9	situation by attempting to convince	
10	him to surrender peacefully, but he	
11	refused to put the gun down.	
12	12.During this briefing, the SED Team	Gaytan Decl., ¶ 7; McCarthy Decl., ¶
13	also developed an operational plan,	7; Olivas Decl., ¶ 7; Pollick Decl., ¶ 7;
14	which included medical plans, gas	Moore Decl., ¶ 7; Stone Decl., ¶ 7;
15	plans, and less lethal plans, before	Pollick Depo. (Ex. "C") at Pollick
16	going to the incident location.	Depo. (Ex. "C") at 5:25-6:4, 22-24.
17	13.The SED Team's medical plan	Gaytan Decl., ¶ 8; McCarthy Decl., ¶
18	included requesting Victorville Fire	8; Olivas Decl., ¶ 8; Pollick Decl., ¶ 8;
19	Department, American Medical	Moore Decl., ¶ 8; Stone Decl., ¶ 8;
20	Response, and air rescue, the	McCarthy Depo. (Ex. "D") at 26:14-
21	sheriff's helicopter, to be on standby	24.
22	in the event that there was a medical	
23	emergency, the BearCat and Corporal	
24	Olivas' vehicle were also set up as	
25	medical extract vehicles.	
26	14.The SED Team's gas plans included	Gaytan Decl., ¶ 9; McCarthy Decl., ¶
27	Corporal Pollick and Deputy Moore	9; Olivas Decl., ¶ 9; Pollick Decl., ¶ 9;
28	having chemical agents should the	Moore Decl., ¶ 9; Stone Decl., ¶ 9;
	need and opportunity to use them	Pollick Depo. (Ex. "C") at 7:8-12.
	arise, and Corporal Pollick developed	
	a chemical agent plan for the house.	
	The SED Team developed numerous	
	less lethal plans to be used at the	
	appropriate point if the opportunity	
	presented itself.	
	15.The SED Team's operational plan	Gaytan Decl., ¶ 10; McCarthy Decl., ¶
	included containing both sides of the	10; Olivas Decl., ¶ 10; Pollick Decl., ¶



1 2 3 4 5 6 7 8 9 10 11 12 13 14	garage, with Corporal McCarthy, Corporal Olivas and Deputy Stone to be positioned on the southeast corner of the garage, with Corporal Olivas with a shield and her pistol, Corporal McCarthy behind Corporal Olivas with lethal cover, and Deputy Stone with a less lethal 40 mm multi-launcher. On the other side, Deputy Moore, Corporal Pollick, and Sergeant Gaytan were to be positioned on the southwest corner of the garage, with Deputy Moore with a shield and his pistol, Corporal Pollick behind Deputy Moore with lethal cover, and Sergeant Gaytan with a less lethal 40 mm single-launcher.	10; Moore Decl., ¶ 10; Stone Decl., ¶ 10.
15 16 17 18	16. Additionally, the SED Team was going to position the BearCat, which is an armored rescue vehicle, in the driveway and face it towards the garage to light up the garage because it was dark outside.	Gaytan Decl., ¶ 11; McCarthy Decl., ¶ 11; Olivas Decl., ¶ 11; Pollick Decl., ¶ 11; Moore Decl., ¶ 11; Stone Decl., ¶ 11; McCarthy Depo. (Ex. "D") at 26:3-7; Moore Depo. (Ex. "E") at 19:10-18.
19 20 21 22 23 24 25	17. Sergeant Gaytan made it clear to the SED Team that if the suspect was to separate himself from the firearm, the team could not allow him to gain access back to that firearm because we did not want him to be able to shoot at us or any members of the public.	Gaytan Decl., ¶ 12; McCarthy Decl., ¶ 12; Olivas Decl., ¶ 12; Pollick Decl., ¶ 12; Moore Decl., ¶ 12; Stone Decl., ¶ 12; Pollick Depo. (Ex. "C") at 6:25-7:7; McCarthy Depo. (Ex. "D") at 45:19-46:2, 76:2-8; Moore Depo. (Ex. "E") at 29:15-30:1; Olivas Depo. (Ex. "F") at 20:18-21:2; Stone Depo. (Ex. "G") at 28:19-29:8.
26 27 28	18. Additionally, during the briefing, the SED Team learned that there was a family who stayed in their home in the northwest corner of the multi-unit	Gaytan Decl., ¶ 13; McCarthy Decl., ¶ 13; Olivas Decl., ¶ 13; Moore Decl., ¶ 13; Stone Decl., ¶ 13.

1	complex.	
2	19.The SED Team made contact with	Gaytan Decl., ¶ 13; McCarthy Decl., ¶
3	the family, and the family decided to	13; Olivas Decl., ¶ 13; Pollick Decl., ¶
4	stay in the home as there was an	13; Moore Decl., ¶ 13; Stone Decl., ¶
5	elderly female at the home who was	13.
6	not easily mobile, and the SED Team	
7	advised the family to shelter in place.	
8	20.The SED Team arrived to the	Gaytan Decl., ¶ 14; McCarthy Decl., ¶
9	incident location with the BearCat	15; Olivas Decl., ¶ 15; Pollick Decl., ¶
10	and met with the patrol sergeant to	15; Moore Decl., ¶ 15; Stone Decl.,
11	gain additional information.	¶14.
12	21.The SED Team learned that Perez	Gaytan Decl., ¶ 14; McCarthy Decl., ¶
13	was kind of nodding off, he was kind	15; Olivas Decl., ¶ 15; Pollick Decl., ¶
14	of lucid, and that it was unclear if he	15; Moore Decl., ¶ 15; Stone Decl., ¶
15	was under the influence of any	14.
16	narcotics or alcohol.	
17	22.Due to the patrol deputies being	Gaytan Decl., ¶ 15; McCarthy Decl., ¶
18	fatigued after hours of attempted	16; Olivas Decl., ¶ 16; Pollick Decl., ¶
19	negotiations and attempts to gain	16; Moore Decl., ¶ 16; Stone Decl., ¶
20	compliance from Perez, the SED	15.
21	Team took over and took their	
22	assigned positions on the corners of	
23	the garage as was discussed in	
24	briefing.	
25	23.Perez remained seated directly	McCarthy Depo. (Ex. "D") at 26:25-
26	behind the pool table, approximately	27:3, 28:3-7, 30:6-14; Moore Depo.
27	16 feet away from the garage	(Ex. "E") at 10:21-23, 22:11-14, 18-19,
28	opening, with the gun in his right	23-24; Olivas Depo. (Ex. "F") at
	hand, and looking back and forth	10:20-11:6; Alcala Depo. (Ex. "H") at
	between the members of the SED	25:6-19; Gaytan Depo. (Ex. "I") at
	team on each side of the garage.	11:22-25; Perez Photos (Ex. "K");
		Garage Photos (Ex. "L").
	24.Before the lethal force encounter,	McCarthy Decl., ¶ 16.
	Corporal McCarthy changed	
	positions from the side of the garage	
	to the BearCat in the driveway so that	
	he could have a different vantage	

1	point to see Perez in the garage.	
2	25. During the incident, Negotiator	Gaytan Decl., ¶ 16; McCarthy Decl., ¶
3	Alcala was the assigned crisis	17; Olivas Decl., ¶ 17; Pollick Decl., ¶
4	negotiator and attempted numerous	17; Moore Decl., ¶ 17; Stone Decl., ¶
5	times to negotiate with Perez and	16; McCarthy Depo. (Ex. "D") at 27:9-
6	gain his compliance.	22, 28:8-14; Gaytan Depo. (Ex. "I") at
7		17:12-15; Incident Audio (Ex. "J").
8	26. During the negotiation, Negotiator	Pollick Depo. (Ex. "C") at 12:9-14,
9	Alcala was able to convince Perez to	18:19-19:1; McCarthy Depo. (Ex. "D")
10	put the gun down. Perez put the gun	at 39:3-13, 67:8-12; Moore Depo. (Ex.
11	by the stool behind the pool table,	"E") at 11:3-15, 12:23-25; Olivas
12	and the deputies viewed this as an act	Depo. (Ex. "F") at 13:7-14; Stone
13	of compliance.	Depo. (Ex. "G") at 20:22-21:14, 30:22-
14		24, 48:10-15; Alcala Depo. (Ex. "H")
15		at 32:24-33:9, 34:13-35:11; Incident
16		Audio (Ex. "J") at 25:00-27:00.
17	27. Then, Negotiator Alcala encouraged	Pollick Depo. (Ex. "C") at 13:2-6,
18	Perez to stand up and walk towards	19:17-21; McCarthy Depo. (Ex. "D")
19	the deputies, Perez complied and	at 41:13-14, 67:13-16; Olivas Depo.
20	walked toward the front of the	(Ex. "F") at 13:15-20, 14:5-13; Moore
21	garage.	Depo. 10:11-13, 11:24-12:10; Stone
22		Depo. (Ex. "G") at 21:18-21, 25, 22:1-
23		5, 48:10-23; Alcala Depo. (Ex. "H") at
24		35:12-20, 41:6-15; Incident Audio (Ex.
25		"J") at 27:00-28:00.
26	28. As Perez started to move towards the	Gaytan Decl., ¶ 16; McCarthy Decl., ¶
27	front of the garage, where the SED	17; Olivas Decl., ¶ 17; Pollick Decl., ¶
28	Team was waiting, Sergeant Gaytan	17; Moore Decl., ¶ 17; Stone Decl., ¶
	instructed Perez to stop so that the	16; Stone Depo. (Ex. "G") at 22:6-8,
	SED Team could safely take Perez	18-21, 26:19-21, 48:16-18; Alcala
	into custody.	Depo. (Ex. "H") at 41:11-17, 47:20-24;
		Gaytan Depo. (Ex. "I") at 20:20-24;
		Incident Audio (Ex. "J") at 28:00-
		31:50.
	29. Sergeant Gaytan communicated to	Moore Depo. (Ex. "E") at 21:22-22:1,
	Perez that the deputies were going to	41:10-16; Olivas Depo. (Ex. "F") at
	have to take him into custody, which	19:24-20:7, 49:3-25; Stone Depo. (Ex.

1	appeared to the deputies to frustrate	"G") at 48:16-18; Gaytan Depo. (Ex.
2	Perez, and lead the deputies to	"I") at 40:5-13, 23-25, 41:1-19;
3	believe that Perez was no longer	Incident Audio (Ex. "J") at 28:00-
4	cooperating.	31:50.
5	30. For a few minutes, while Sergeant	Pollick Depo. (Ex. "C") at 13:7-19;
6	Gaytan continued to talk to Perez to	McCarthy Depo. (Ex. "D") at 47:1-12,
7	have him peacefully surrender, Perez	53:3-7; Moore Depo. (Ex. "E") at
8	stood parallel to the middle of the	14:18-21, 21:22-22:1, 39:24-25, 40:1,
9	pool table, approximately eight feet	8-9, 24-25, 41:1-3, 10-16; Stone Depo.
10	north of the garage opening and	(Ex. "G") at 31:8-10; Gaytan Depo.
11	approximately eight feet away from	(Ex. "I") at 31:5-14, 40:23-41:19;
12	the gun's location, Perez then put his	Incident Audio (Ex. "J") at 28:00-
13	hands up and shook his head back	31:50; Garage Photos (Ex. "L").
14	and forth, with an irritated and	
15	frustrated look, without making eye	
16	contact with anyone.	
17	31. Suddenly, Perez turned slightly east,	Pollick Depo. (Ex. "C") at 20:25-21:8,
18	stepping back with his left foot, and	15-25, 22:1; McCarthy Depo. (Ex.
19	pivoting on his right foot.	"D") at 52:19-24, 67:17-19, 70:2-9;
20		Moore Depo. (Ex. "E") at 36:12-14,
21		18-24, 41:10-22; Olivas Depo. (Ex.
22		"F") at 20:3-7; Stone Depo. (Ex. "G")
23		at 27:4-28:4, 46:11-18, 48:19-49:6;
24		Alcala Depo. (Ex. "H") at 48:7-15;
25		Gaytan Depo. (Ex. "I") at 32:18-33:4,
26		40:5-13; Incident Audio (Ex. "J") at
27		28:00-31:50.
28	32. As soon as Perez stepped back,	Pollick Depo. (Ex. "C") at 20:25-21:8;
	Deputy Stone deployed a less-lethal	McCarthy Depo. (Ex. "D") at 52:25-
	40-millimeter round, as was	53:12, 70:2-9; Moore Depo. (Ex. "E")
	discussed in the SED Teams planning	at 34:23-35:17, 36:8-14, 41:20-22,
	briefing, which hit Perez somewhere	54:10-15; Olivas Depo. (Ex. "F") at
	between his waist and the top of his	21:16-22:9, 50:1-3; Stone Depo. (Ex.
	shoulders.	"G") at 27:4-28:4, 8-25, 29:1-8, 12-17,
		46:11-18, 48:19-49:6; Gaytan Depo.
		(Ex. "I") at 28:18-29:9; Incident Audio
		(Ex. "J") at 31:49-31:57.

1 2 3 4 5 6 7	33. Sergeant Gaytan and Deputy Stone each deployed another less-lethal round at Perez, which also appeared to strike Perez at center mass. However, the less-lethal rounds appeared to be ineffective in gaining Perez' compliance.	Pollick Depo. (Ex. "C") at 23:17-25:10; McCarthy Depo. (Ex. "D") at 56:22-57:3, 67:24-68:2; Moore Depo. (Ex. "E") at 34:23-35:17, 54:10-15; Olivas Depo. (Ex. "F") at 22:10-19; Alcala Depo. (Ex. "H") at 49:17-20; Gaytan Depo. (Ex. "I") at 34:9-18; Incident Audio (Ex. "J") at 31:49-31:57.
8 9 10 11 12	34. Although it appeared to the deputies that Perez was hit with three (3) less-lethal rounds, he accelerated and ran toward where the gun was located at the back of the pool table.	Pollick Depo. (Ex. "C") at 23:12-17, 27:23-28:4, 30:17-18, 22-25, 41:16-20, 42:6-11; McCarthy Depo. (Ex. "D") at 65:19-24, 68:3-11, 24-25, 69:1, 6-10; Moore Depo. (Ex. "E") at 35:22-36:3, 41:23-42:1, 54:16-18, 67:15, 19-21; Gaytan Depo. (Ex. "I") at 38:1-23.
13 14 15 16 17 18 19 20 21	35. After the less-lethal rounds had been deployed and were ineffective in gaining Perez' compliance, and in response to Perez accelerating toward the back of the pool table where the gun was located, Corporal Cory McCarthy, Deputy Olivas, Deputy Pollick, and Deputy Moore each fired lethal rounds, at Perez in order to stop the immediate threat they perceived from Perez' actions.	Pollick Depo. (Ex. "C") at 30:6-18, 22-25, 31:2-12, 55:22-56:1, 20-22; McCarthy Depo. (Ex. "D") at 59:4-11; 60:14-24; 63:19-22; 65:13-18; Moore Depo. (Ex. "E") at 43:1-8, 11-19, 64:19-25; Olivas Depo. (Ex. "F") at 24:13-15; Incident Audio (Ex. "J") at 31:49-31:57.
22 23 24 25 26 27 28	36. The deputies fired at Perez as he ran toward the back of the garage, rounding the corner of the pool table, dropped his center of gravity as if crouching down behind the pool table, within arms' reach of where the gun was located on the floor. The deputies reasonably believed that Perez was trying to get to the gun to shoot someone.	Pollick Depo. (Ex. "C") at 27:2-8, 28:13-21; 39:16-18, 21-24. 56:20-22; McCarthy Depo. (Ex. "D") at 59:4-11, 60:19-24, 65:13-18, 68:24-69:1, 6-10; Moore Depo. (Ex. "E") at 43:11-19, 44:2-12, 45:3-4, 8-12, 48:4-6, 11-14, 52:7-13; Olivas Depo. (Ex. "F") at 32:11-13, 22-25, 33:1-3; Stone Depo. (Ex. "G") at 45:22-46:3, 7-18, 50:4-7, 11-15; Gaytan Depo. (Ex. "I") at 38:1-

1		23.
2	37. Based on the totality of the	Pollick Depo. (Ex. "C") at 39:16-18,
3	circumstances, Perez having the gun	21-24, 40:4-5, 9-13; McCarthy Depo.
4	in his hands for several hours and	(Ex. "D") at 65:13-18; Stone Depo.
5	having every opportunity to surrender	(Ex. "G") at 45:22-46:3; Gaytan Depo.
6	peacefully, the deputies had no	(Ex. "I") at 38:14-23.
7	reason to believe that Perez was	
8	running back into the garage for any	
9	other reason than to get back to the	
10	gun.	
11	38. Sergeant Gaytan ordered the deputies	Pollick Depo. (Ex. "C") at 44:6-8;
12	to stop shooting as it appeared Perez	Gaytan Depo. (Ex. "I") at 45:10-46:21;
13	had fallen to the ground and had	Incident Audio (Ex. "J") at 31:49-
14	stopped moving.	32:10.
15	39. The deputies at the scene retrieved an	Gaytan Decl., ¶ 18; McCarthy Decl., ¶
16	SED robot, to confirm that Perez was	19; Olivas Decl., ¶ 19; Pollick Decl., ¶
17	no longer a threat. Once it was	19; Moore Decl., ¶ 19; Stone Decl., ¶
18	confirmed Perez was no longer	18; Pollick Depo. (Ex. "C") at 44:9-13,
19	moving, the SED Team approached	45:4-9, McCarthy Depo. (Ex. "D") at
20	and secured to scene.	70:11-12, 16-19; Incident Audio (Ex.
21		"J") at 32:10-36:00.
22	40. Corporal Pollick and Corporal	Pollick Depo. (Ex. "C") at 49:10-21;
23	McCarthy approached Perez and saw	McCarthy Depo. (Ex. "D") at 71:1-4,
24	that Perez was laying on top of the	8-12; Moore Depo. (Ex. "E") at 82:1-
25	gun.	11, 83:13-22; Incident Audio (Ex. "J")
26		at 36:00-37:20.
27	41. Deputy Stone saw the gun sticking	Stone Decl., ¶ 18; Pollick Depo. (Ex.
28	out from under Perez' stomach where	"C") at 49:10-21; McCarthy Depo.
	his hands were also located, and	(Ex. "D") at 70:16-19, 71:1-4; Moore
	kicked it away from him so that	Depo. (Ex. "E") at 81:14-25, Olivas
	Corporal Pollick and Corporal	Depo. (Ex. "F") at 52:14-18; Incident
	McCarthy could start to provide	Audio (Ex. "J") at 36:00-37:20.
	medical aid.	
	42. Corporal Pollick and Corporal	Gaytan Decl., ¶ 18; McCarthy Decl., ¶
	McCarthy, who are certified EMTs,	19; Olivas Decl., ¶ 19; Pollick Decl., ¶
	provided immediate medical aid to	19; Moore Decl., ¶ 19; Stone Decl., ¶
	Perez, who was still breathing when	18; Pollick Depo. (Ex. "C") at 45:10-

1	they approached him.	14, 46:3-14, 17-20, 47:8-20; McCarthy Depo. (Ex. "D") at 70:22-24, 71:3-4, 17-22; Olivas Depo. (Ex. "F") at 57:12-17; Incident Audio (Ex. "J") at 37:20-39:30.
2		
3		
4		
5	43. Victorville Fire Department and American Medical Response were staged in the area, and responded and provided medical treatment immediately after the scene was secured.	Pollick Depo. (Ex. "C") at 46:21-47:4; McCarthy Depo. (Ex. "D") at 74:18-21, 75:1-17; Olivas Depo. (Ex. "F") at 57:12-23.
6		
7		
8		
9	44. Perez was transported to Victor Valley Global Medical Center for treatment.	Pollick Depo. (Ex. "C") at 46:15-16.
10		
11		
12	45. The deputies on the scene were not able to give commands to Perez before to lethal force encounter occurred as the situation was very dynamic, uncertain, and rapidly-evolving.	Pollick Depo. (Ex. "C") at 26:9-16, 33:18-23; Moore Depo. (Ex. "E") at 51:6-10
13		
14		
15		
16	46. San Bernardino County Sheriff's Department Policy 3.608, The Use of Lethal Force, states that a deputy may use deadly force to protect himself or others from what he reasonably believes to be a threat of death or serious bodily injury.	Pollick Depo. (Ex. "C") at 56:13-19; Moore Depo. (Ex. "E") at 65:17-18, 22-24, 66:7-10, 14-18; Olivas Depo. (Ex. "F") at 58:11-14; Use of Force Policy (Ex. M").
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18		
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21	47. Since the Sheriff's academy, Corporal McCarthy, Deputy Olivas, Deputy Pollick, Deputy Moore, Deputy Stone, and Sergeant Gaytan have been trained in accordance with San Bernardino County Sheriff's Department Policy 3.608, The Use of Lethal Force, that the use of lethal force is justified to protect themselves or others from what they	Gaytan Decl., ¶ 17; McCarthy Decl., ¶ 18; Olivas Decl., ¶ 18; Pollick Decl., ¶ 18; Moore Decl., ¶ 18; Stone Decl., ¶ 17; McCarthy Depo. (Ex. "D") at 13:6-16, 19:1-8; Use of Force Policy (Ex. M").
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reasonably believe to be an immediate threat of death or serious bodily injury.

CONCLUSIONS OF LAW

1. Defendant Deputies are entitled to judgment on plaintiffs' first cause of action for excessive force under 42 U.S.C. § 1983 because under the uncontroverted facts, Defendant Deputies' use of force was objectively reasonable under the totality of the circumstances. Further, there is no evidence that Defendant Deputies violated Perez' clearly established constitutional rights at the time of the incident, which entitles them to qualified immunity.

2. Defendant Deputies are entitled to judgment on plaintiffs' second cause of action for denial of medical care under 42 U.S.C. § 1983 because medical care was promptly given and summoned to the scene when it was safe to do so. Further, there is no evidence that Defendant Deputies violated the Perez' clearly established constitutional rights at the time of the incident, which entitles them to qualified immunity.

3. Defendant Deputies are entitled to judgment on plaintiffs' third cause of action for due process/ interference with familial relations under 42 U.S.C. § 1983 because there is no evidence that Defendant Deputies acted with deliberate indifference and/or a purpose to harm unrelated to legitimate law enforcement objectives. Further, there is no evidence that Defendant Deputies violated any clearly established constitutional rights at the time of the incident, which entitles them to qualified immunity.

4. Defendant County of San Bernardino is entitled to judgment on plaintiffs' fourth cause of action for *Monell* Liability – inadequate training under 42 U.S.C. § 1983 because Defendant Deputies used only objectively reasonable force under the totality of the circumstances. Further, there is no evidence that the County

1 failed to train its deputies.

2 5. Defendant County of San Bernardino is entitled to judgment on
3 plaintiffs' fifth cause of action for *Monell* Liability – unconstitutional custom,
4 practice, and policy under 42 U.S.C. § 1983 because Defendant Deputies used only
5 objectively reasonable force under the totality of the circumstances. Further, there is
6 no evidence that the County had an unlawful custom, practice or policy.

7 6. Defendant Deputies are entitled to judgment on plaintiffs' sixth cause of
8 action for battery and plaintiffs' seventh cause of action for negligence because
9 Defendant Deputies used only objectively reasonable force under the totality of the
10 circumstances. For the same reasons no constitutional violations occurred, no
11 violations of California law were committed.

12 7. Defendant Deputies are entitled to judgment on plaintiffs' eighth cause
13 of action for violation of the Bane Act because there is no evidence that Defendant
14 Deputies acted with the specific intent to violate the Perez' right to be free from an
15 unreasonable seizure.

16 8. Defendant County of San Bernardino is entitled to judgment for each of
17 plaintiffs' state law claims, as Defendant Deputies are not liable and there is no basis
18 for respondeat superior liability against the County. Cal. Gov. Code § 815.2(a).

19 9. Defendant Deputies are entitled to judgment on plaintiffs' claim for
20 punitive damages because there is no evidence that he acted with malice, oppression,
21 or reckless disregard for the Perez' rights during the incident.

1 DATED: March 1, 2024

**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**

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4 By: /s/ Kayleigh A. Andersen, Esq.
5 Eugene P. Ramirez, Esq.
6 Lynn Carpenter, Esq.
7 Kayleigh A. Andersen, Esq.
8 Attorneys for Defendants, COUNTY OF
9 SAN BERNARDINO; CORY
10 MCCARTHY, ANDREW POLLICK;
11 DAVID MOORE, and CRISTINA
12 OLIVAS
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 801 S. Figueroa St, 15th Floor, Los Angeles, CA 90017-3012.

On March 1, 2024, I served true copies of the following document(s) described as **STATEMENT OF UNCONTROVERTED FACTS IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action as follows:

LAW OFFICES OF DALE K. GALIPO

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*ATTORNEYS FOR PLAINTIFFS, A.J.P.,
AND A.M.P.. ET AL.*

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 1, 2024, at Los Angeles, California.

Maria T. Castro

Maria T. Castro